

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Markco Penn,
Petitioner

v. Case No. 1:08-cv-290

Robin Knab, Warden,
Respondent

ORDER

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed February 4, 2009 (Doc. 14).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation correct.

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED**. Petitioner's motion for leave to file a supplement to the petition and "for scribler's (sic) error" is **DENIED as moot**. Petitioner's petition for writ of habeas corpus is **DENIED** with prejudice. Respondent State of Ohio and Warden Knab's motion to dismiss is **GRANTED**.

A certificate of appealability will not issue with respect to the claims alleged in the petition because petitioner has not made a substantial showing of the denial of a constitutional right based on the claims. *See* 28 U.S.C. § 2253(c); Fed .R. App. P.

22(b).

This Court certifies that pursuant to 28 U.S.C. § 1915(a)(3) an appeal of this Order would not be taken in good faith, and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

Date: March 3, 2009

s/Sandra S. Beckwith
Sandra S. Beckwith, Senior Judge
United States District Court